STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1453

In re the Marriage of:
Sheila L. Duhn, n/k/a Graff, petitioner,
Respondent,

vs.

Kurt D. Duhn,
Appellant.

Filed June 24, 2019
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-FA-15-460

John R. Hill, Larkin Hoffman Daly & Lindgren Ltd., Minneapolis, Minnesota (for respondent)

Shane C. Perry, Perry & Perry, PLLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Cleary, Presiding Chief Judge; Ross, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

Sheila L. Graff and Kurt D. Duhn were married for approximately 23 years before their marriage was dissolved. The district court ordered Duhn to pay Graff permanent spousal maintenance in the amount of $1,316 per month. We conclude that the district

court did not err by finding that Graff demonstrated a need for spousal maintenance or by determining the amount of the maintenance award. Therefore, we affirm.

FACTS

Graff and Duhn were married in June 1994. They have three children, all of whom now are adults. Graff petitioned for dissolution of the marriage in January 2015. At that time, she was 48 years old, and Duhn was 52 years old.

The case was tried on multiple partial days between April and October 2016. In early 2017, the district court dissolved the marriage and determined that Graff is entitled to an award of permanent spousal maintenance but reserved ruling on the amount of the award because each of the parties was unemployed. The district court scheduled a review hearing for September 2017 and ordered Duhn in the meantime to pay Graff temporary spousal maintenance of $617 per month.

After conducting the review hearing, the district court issued its final order in July 2018. The district court found that Graff's net monthly income is $2,649, which consists of a disability retirement benefit of $1,703 and imputed income of $946, which is the amount the district court found she could earn by working part-time. The district court found that Graff's reasonable monthly expenses are $4,400. Accordingly, Graff would, on her own, have a monthly deficit of $1,751.

The district court found that Duhn's net monthly income is $5,762 and that his reasonable monthly expenses are $4,881. Accordingly, the district court found that Duhn has a monthly surplus of $881.

In the final paragraph of its analysis, the district court noted that Duhn's monthly surplus "is not enough for Wife to meet her reasonable budget." The district court concluded as follows: "The Court finds that it is reasonable to have each of them share this shortfall. Thus, Husband should pay maintenance of $881 + $435 = $1,316 a month. This will leave Wife $435 short of her budget and Husband $435 short of his budget." Accordingly, the district court set the amount of the award of permanent spousal maintenance at $1,316. Duhn appeals.

D E C I S I O N

Duhn argues that the district court erred in two ways. His first argument challenges the district court's ruling that Graff is entitled to an award of permanent spousal maintenance. His second argument challenges the district court's determination of the amount of the award of permanent spousal maintenance.

Spousal maintenance is defined by statute to mean "an award of . . . payments from the future income or earnings of one spouse for the support and maintenance of the other." Minn. Stat. § 518.003, subd. 3a (2018). If a party requests spousal maintenance, a district court engages in a two-step analysis. First, a district court must consider whether the spouse seeking spousal maintenance either:

> (a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or
>
> (b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate

> employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Minn. Stat. § 518.552, subd. 1 (2018). This threshold inquiry asks, in essence, whether the party seeking spousal maintenance has demonstrated a "showing of need." *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016). A party demonstrates a need for spousal maintenance if, considering the standard of living during the marriage, the party is unable to provide for his or her reasonable expenses through employment income or disability benefits or a combination of both. *See* Minn. Stat. § 518.552, subd. 1; *Doherty v. Doherty*, 388 N.W.2d 1, 2-3 (Minn. App. 1986). "Once a spouse has made a sufficient showing of need, only then will a court consider the amount and duration of a maintenance award by weighing the factors enumerated in Minn. Stat. § 518.552, subd. 2." *Curtis*, 887 N.W.2d at 252. If a district court awards spousal maintenance, its award "shall be in amounts and for periods of time, either temporary or permanent, as the court deems just, . . . after considering all relevant factors." Minn. Stat. § 518.552, subd. 2 (2018); *see also Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982).

A district court has broad discretion in deciding whether to award spousal maintenance, and this court reviews such a decision for a clear abuse of that discretion. *Curtis*, 887 N.W.2d at 252. A district court abuses its discretion if it makes findings of fact that are not supported by the record, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). To the extent that a maintenance decision depends on findings of fact, this

court applies a clear-error standard of review to those findings of fact. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

A.

Duhn first argues that the district court erred by awarding spousal maintenance on the ground that Graff did not demonstrate that she is in need of spousal maintenance. He contends that she did not demonstrate a need for spousal maintenance because the district court found that her claimed expenses were unreasonable and there is no evidence to support the district court's findings of her reasonable expenses.

Graff submitted a proposed monthly budget with 34 categories of expenses, totaling $6,785 per month. The district court made the following finding concerning Graff's proposed budget:

> Wife presented a budget of monthly living expenses of $6,785 which the Court finds is not reasonable under the circumstances. The Court finds that her rent should be no more than $1,350 rather than $1,650. There is no substantiation for most of her expenses. The Court finds that there is no basis to conclude that her related housing expenses such as electricity and gas should be more than what Husband pays for a house. She is not entitled to include the cost of cell phones for her children. Her grocery bill at $550 a month is high and the Court finds that $300 is more reasonable. Given the lack of resources, it is not reasonable for her to buy life insurance since her children are now adults. It is also unreasonable to spend $340 a month on gifts. She has provided no documentation to support her alleged expense for gas and she has testified that it is difficult for her to travel which makes it unclear as to why she would be driving so much.

Duhn contends that the "finding that [Graff's] proffered budget was unreasonable and unsubstantiated is fatal to any award of spousal maintenance." In essence, he contends

that the evidence is insufficient to show that she has any reasonable expenses in excess of her income and, thus, she has not established a need for spousal maintenance.

In response, Graff contends that there was considerable evidence in the record about both parties' expenses, both in the form of exhibits and testimony. Graff also contends that Duhn's own attorney suggested that, in the absence of any other source, the district court should use Duhn's reasonable expenses as a guide in determining Graff's reasonable expenses. Indeed, the record reveals that, during the September 2017 review hearing, Duhn's attorney made the following suggestion to the district court with respect to this issue:

> [I]f you look at what [Graff's] reasonable budget is and how it differs from Mr. Duhn's, using his budget as a standard that that's the standard at which her budget could be and adjusting her need because of the differences between their living expenses. . . . If you were to use Mr. Duhn's budget as the ruler and then adjust down for those expenses she doesn't have like spousal maintenance of $617. She doesn't pay property taxes of $573 a month, which Mr. Duhn pays.

The district court responded to the suggestion favorably:

> Yeah. But she has other expenses that he doesn't have. . . . She has medical expenses that he doesn't have. Okay. I hear what you're saying. . . . You've now explained to me one way I could consider doing this, which is to use Mr. Duhn's budget as a baseline and subtract things off that she doesn't have to pay.

The district court implemented Duhn's suggestion in its finding by stating, in the penultimate sentence, "Certainly his expenses are a guide, and the Court has assumed many of those." In short, Duhn asked the district court to do exactly what Duhn now argues is error. If it is an error, it is an invited error and, thus, is not a ground for reversal. *See*

Majerus v. Guelsow, 113 N.W.2d 450, 457 (Minn. 1962); *McAlpine v. Fidelity & Casualty Co.*, 158 N.W. 967, 970 (Minn. 1916); *In re Hibbing Taconite Mine and Stockpile Progression*, 888 N.W.2d 336, 344 (Minn. App. 2016).

Thus, the district court did not err on the ground that its finding of Graff's reasonable monthly expenses is without a sufficient evidentiary basis.

B.

Duhn also argues that the district court erred by "equalizing" his monthly surplus and Graff's monthly deficit when determining the amount of the maintenance award. He characterizes the district court's approach as "applying the doctrine of 'sharing the pain'" and asserts that there is no legal authority for that approach.

The district court found, either impliedly or expressly, that, given the parties' respective incomes and reasonable expenses, Graff would have a monthly deficit of $1,751, and Duhn would have a monthly surplus of $881. The district court essentially identified the mid-point between those two outcomes, a monthly deficit of $435, and imposed that outcome on both parties by ordering Duhn to pay Graff $1,316 per month in permanent spousal maintenance. Duhn contends that the sharing-the-pain approach, as he describes it, "has not been explicitly adopted by the Minnesota Supreme Court." Our research confirms the truth of that statement. It also is true, however, that the supreme court has not disapproved of a spousal-maintenance award that resembles the award in this case.

We resolve Duhn's argument by reference to general principles. "The purpose of a maintenance award is to allow the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as is equitable under the

circumstances." *Melius v. Melius*, 765 N.W.2d 411, 416 (Minn. App. 2009) (quotation omitted). "The maintenance order shall be in amounts . . . as the court deems just." Minn. Stat. § 518.552, subd. 2. The amount is to be determined by considering multiple factors. *Id*. A district court must balance the recipient's need against the obligor's ability to pay. *See, e.g.*, *Erlandson*, 318 N.W.2d at 38-40. A district court has "broad discretion" in the matter. *Curtis*, 887 N.W.2d at 252, 254. The supreme court has stated that "equity does not demand absolute parity in . . . post-dissolution positions" but also has stated that "the bulk of the economic burden should not be visited on one party without regard to the parties' standard of living during the marriage." *Nardini v. Nardini*, 414 N.W.2d 184, 198 (Minn. 1987). There is no caselaw stating that, in imposing a spousal-maintenance obligation on a party who would have a monthly surplus by himself or herself, a district court may not award maintenance in an amount that would cause the obligor to experience monthly deficits. The matter simply is not subject to bright lines; it depends on the circumstances of the case. *See Curtis*, 887 N.W.2d at 254.

In this case, the district court found that the parties' standard of living in the later years of their marriage was no longer sustainable given the significant reduction in each person's income. The district court determined that the sum of the parties' incomes was less than the sum of the parties' reasonable expenses. The court determined that "it is reasonable to have each of them share this shortfall." Although the district court did not elaborate on why that is a reasonable outcome, it is apparent that the district court exercised its discretion and considered the relevant factors in the course of fixing the amount of permanent spousal maintenance. Although the district court might reasonably have chosen

to award a lesser amount, thereby preserving more of Duhn's standard of living at the expense of Graff's, we cannot say that it was an abuse of discretion not to do so.

Thus, the district court did not err by ordering permanent spousal maintenance in the amount of $1,316 per month.

Affirmed.